



OVERVIEW OF LAWS AND REGULATIONS

Fair Housing Act

Fair Housing Act / OTS Nondiscrimination Regulations

Executive Summary:

The Fair Housing Act (FHA) is Title VIII of the Civil Rights Act of 1968, as amended (42 USC 3601 et seq.). Primary rule-making and enforcement authority for the FHA lies with the Department of Housing and Urban Development (HUD). HUD regulations implementing the FHA can be found at 24 CFR 100 et seq. The OTS's Nondiscrimination Regulations can be found at 12 CFR 528.1 et seq. and 12 CFR 528.9.

The FHA regulates many practices relating to the financing, selling, renting, advertising, brokering, and appraising of housing. It specifically includes provisions that make it unlawful for any lender to discriminate in the making or purchasing of residential real estate-related homes based on race, color, religion, sex, handicap, familial status, or national origin. This prohibition means that thrift institutions engaged in residential real estate lending are subject to both the FHA and the Equal Credit Opportunity Act (ECOA) when conducting such transactions. The FHA also prohibits discrimination in the sale or rental of residential real estate owned by the institution. Recent amendments to HUD regulations provide that information generated by self-tests voluntarily conducted by an institution to determine its compliance with the FHA is considered privileged, as provided therein.

Many of the provisions of the FHA and HUD's implementing regulations are reflected in the OTS's Nondiscrimination Regulations. These regulations prohibit, among other things, refusals to consider loan applications on the basis of the age or location of a dwelling, and discrimination based on race, color, religion, sex, handicap, familial status or national origin, in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of housing related loans. OTS regulated institutions must also ensure nondiscrimination in connection with its use of or reliance on residential appraisals, underwriting standards, advertising/marketing services, and internal employment practices.

Note that the FHA, the ECOA, and OTS's Nondiscrimination Regulations should be read together in order to fully understand the scope of a thrift's fair lending obligations.

Business Areas Impacted:

- Residential Lending Units
- Residential Credit Application Processing
- Residential Credit Underwriting
- Credit Operations
- Appraisal of Residential Real Estate



Fair Housing Act

- Mortgage Insurance
- Marketing of Residential Loan Products and Services
- Operation of Rental REO
- Customer Service



Fair Housing Act

Highlights:

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
<p>Policy/Procedures</p> <p>Adopt a policy for implementing the FHA (including applicable HUD regulations) and OTS's Non-discrimination Regulations. Also, ensure the existence of an internal environment that does not tolerate discrimination in any aspect of a residential real estate-related transaction. Maintain comprehensive written procedures to ensure compliance with the FHA and OTS Nondiscrimination Regulations.</p>	Continuing	<p>Policy Statement</p> <p>Written Procedures</p>
<p>Nondiscrimination in Residential Lending</p> <p>Ensure that officers and staff of the institution do not discriminate against any person in making or setting the terms or conditions of any residential real estate-related transaction on the basis of race, color, religion, sex, handicap, familial status, or national origin (the prohibited bases).</p> <p>(Note that use of the term "residential real estate-related transaction" here means (1) the making or purchasing of loans or providing other financial assistance for the purchase, construction, improvement, repair or maintenance of a dwelling secured by residential real estate or (2) any selling, brokering, or appraising of residential real property.)</p>	Continuing	<p>All manuals related to residential lending</p>
<p>Neighborhood Characteristics (Redlining)</p> <p>Ensure that the institution does not deny a loan on a dwelling due to a prohibited basis attributed to a neighborhood by virtue of the characteristics of that neighborhood.</p>	Continuing	<p>All manuals related to residential lending</p> <p>Underwriting Guidelines</p> <p>Appraisal Guidelines</p>



Fair Housing Act

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
<p>Age or Location of Dwelling / Appraisals</p> <p>Ensure that the institution does not deny a loan application on a dwelling because of the age or location of that dwelling when such a denial has the effect of discriminating against persons on a prohibited basis.</p> <p>Ensure the institution does not use or rely upon an appraisal of a dwelling that is discriminatory on the bases of the age or location of the dwelling or has the effect of discriminating against persons on a prohibited bases.</p>	Continuing	<p>All manuals related to residential lending</p> <p>Underwriting Guidelines</p> <p>Appraisal Guidelines</p>
<p>Nondiscriminatory Underwriting Standards</p> <p>Ensure that the institution has clearly written, nondiscriminatory loan underwriting standards available to the public upon request, at each of its offices. These underwriting standards must be reviewed annually.</p>	Continuing	<p>All manuals related to residential lending</p> <p>Underwriting Guidelines</p>
<p>Consideration of Joint Income</p> <p>Ensure that the institution considers without prejudice the combined income of joint applicants for a loan or other service.</p>	Continuing	<p>All manuals related to residential lending</p> <p>Underwriting Guidelines</p>
<p>Nondiscrimination in Sale/Rental of Housing</p> <p>For institutions that manage and market residential real estate owned (REO), ensure that its officers, staff, agents, and representatives do not:</p> <ol style="list-style-type: none"> 1. Refuse to sell or rent housing after a bona fide offer is made, or refuse to negotiate to sell or rent, or otherwise make unavailable or deny a dwelling to any person on a prohibited basis. 	Continuing	<p>All manuals related to residential lending and the marketing, appraising, renting, and sale of REO</p>



Fair Housing Act

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
<ol style="list-style-type: none">Discriminate on a prohibited basis with respect to terms, conditions, or privileges of sale or rental of a dwelling.Make any oral or written statement or advertisement with respect to a sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on a prohibited basis.Falsely represent that a dwelling is not available for inspection, sale, or rental to any person on a prohibited basis.Induce anyone to sell or rent a dwelling based on representations concerning the entry or prospects of entry into a neighborhood of persons based on a discriminatory basis.		
<p>HUD Regulations</p> <p>Ensure the institution's compliance with all HUD regulations implementing the FHA and OTS Non-discrimination Regulations relating to residential real estate lending.</p> <p>The regulations forbid certain practices related to residential lending when conducted on a <u>prohibited basis</u> including, but not limited to, the following:</p> <ul style="list-style-type: none">Failing or refusing to provide to any person with information on the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others.	Continuing	<p>Appropriate manuals and agreements related to residential lending and the purchase and sale of residential loans</p> <p>Underwriting Guidelines</p>



Fair Housing Act

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
<ul style="list-style-type: none">• Purchasing loans or other debts or securities related to or secured by dwellings in certain communities or neighborhoods but not others.• Applying different standards in pooling or packaging loans or securities, which relate to or are secured by dwellings.• Using different policies, practices, or procedures in evaluating or determining creditworthiness of any person in connection with providing any loan for and/or secured by a dwelling.• Applying different standards in determining the type of loan to be provided or fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures or other terms or conditions of a residential real estate loan.		
<p>Equal Housing Lending Poster</p> <p>Display Equal Housing Lender poster in the lobby of each office in a manner that is readily apparent to persons seeking loans. (For details on the content and format of the poster, see Section 528.5)</p>	Continuing	Equal Housing Lending Poster



Fair Housing Act

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
<p>Nondiscriminatory Advertising</p> <p>Ensure the institution does not directly or indirectly engage in any form of advertising or marketing practices that implies or suggests a policy of discrimination or exclusion in violation of the FHA or OTS Nondiscrimination Regulations.</p> <p>Also, ensure that advertisements, other than for savings, include the appropriate logotype and legend as indicated in Section 528.4.</p>	Continuing	Advertising/Marketing Materials
<p>Nondiscrimination in Employment</p> <p>Ensure that the institution's policies, procedures, and practices prohibit any form of employment discrimination based on race, color, religion, sex, or national origin, as described in Section 528.7. Note other practices, laws, and regulations that may give rise to employment discrimination are referenced in Section 528.7.</p>	Continuing	Employment Policies Training Policies and Procedures Curriculum
<p>Self-Testing</p> <p>Voluntary self-testing may be conducted by an institution to determine its level of compliance with the FHA.</p> <p>Institutions have a legal privilege in information developed as a result of self-tests that they voluntarily conduct to determine their compliance with the FHA. The privilege applies only if the definition of "self test" is met and the creditor takes appropriate corrective action as described in the implementing regulations.</p> <p>Note that data or factual information that is available or can be derived from credit or application files is not privileged. Moreover, data collection required by law or any government authority is not a voluntary self-test.</p>	Continuing	Self-Test Report and Results



Fair Housing Act

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
The privilege may be lost under certain circumstances described in the regulation.		
<p>Training</p> <p>Provide training to all employees involved in any aspect of residential real estate, including the financing, selling, renting, advertising, brokering, and appraising of housing. All employees should be provided with training on the basic principles and core requirements of the FHA, along with the other relevant fair lending laws and regulations.</p>	Continuing	<p>Policies and Procedures</p> <p>Training Records</p> <p>Curriculum</p>
<p>Monitoring</p> <p>Conduct workflow monitoring to measure the institution's compliance performance with the requirements of the FHA, as well as other relevant fair lending laws and regulations.</p> <p>Monitoring must include a process for handling, tracking and resolving consumer complaints.</p>	Continuing	<p>Written reports to track results and provide feedback to employees.</p> <p>Compliant and response documentation</p> <p>Compliant Activity database.</p>
<p>Self-Evaluation</p> <p>Establish an internal or external review program emphasizing periodic (at least annually) self-assessment reviews to evaluate overall compliance with the FHA and ensure the institution's practices conform to its policies and procedures.</p>	Per Risk Schedule	<p>Compliance management program</p> <p>Written reports (include deficiencies and corrective action)</p> <p>Audit Reports</p>
<p>Updating</p> <p>Update Policies, procedures, application forms, advertisements, as necessary to reflect changes in regulations, internal systems, or operations. Ensure effective communication and distribution of updated materials to all levels of personnel.</p>	Continuing	<p>All Affected documentation</p> <p>Institution Web site</p>